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MANAGEMENT LLC & KYLE
SAMANI

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MARK YOUNG, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

SOLANA LABS, INC., THE SOLANA
FOUNDATION, ANATOLY YAKOVENKO,
MULTICOIN CAPITAL MANAGEMENT
LLC, and KYLE SAMANI,

Defendants.

Case No. No. 3:22-cv-03912-RFL

**DECLARATION OF DAVID H.
MCGILL IN SUPPORT OF
DEFENDANTS SOLANA LABS, INC.,
MULTICOIN CAPITAL
MANAGEMENT LLC, AND KYLE
SMANAI'S MOTION TO COMPEL
ARBITRATION**

(Civil L.R. 6-1, 6-2, 7-12)

Date: August 6, 2024

Time: 10:00 AM

Courtroom: Courtroom 15 – 18th Floor

Judge: Hon. Rita F. Lin

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21 SOLANA LABS, INC.
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1 I, David H. McGill, hereby declare as follows:

2 1. I am a partner at the law firm Orrick, Herrington & Sutcliffe LLP, and am counsel
3 for Solana Labs, Inc. in the above-captioned litigation. As such, I am familiar with the facts set
4 forth herein based on personal knowledge, examination of files retained by the firm, or publicly
5 available information, and submit this declaration in support of Defendants' Motion to Compel
6 Arbitration.

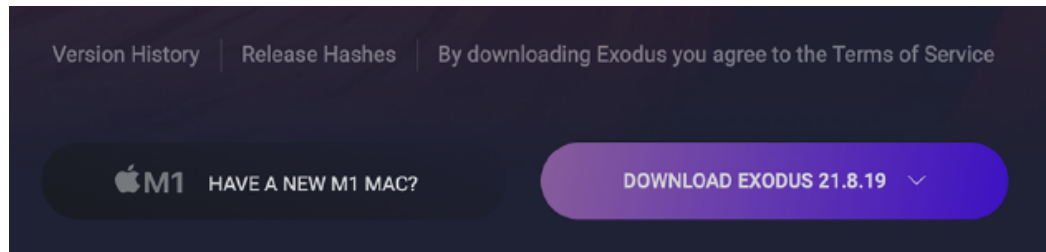
7 2. Exodus markets itself as a secure digital wallet where users can store cryptocurrency
8 and trade, purchase, and sell tokens, including the Solana tokens ("SOL") at issue here, via third-
9 party exchanges. *See* Getting Started with Exodus ("Getting Started"), Exodus (last visited Apr.
10 11, 2024), <https://www.exodus.com/support/en/articles/8598609-getting-started-with-exodus>.
11 Users access Exodus platform by first downloading the Exodus software from the Exodus website.
12 *Id.* ("To experience all the features Exodus has to offer, download your free self-custody wallet
13 today.").

14 3. In August 2021, users were able to download the Exodus software through the
15 Exodus download page, accessible at <https://www.exodus.com/download/>.

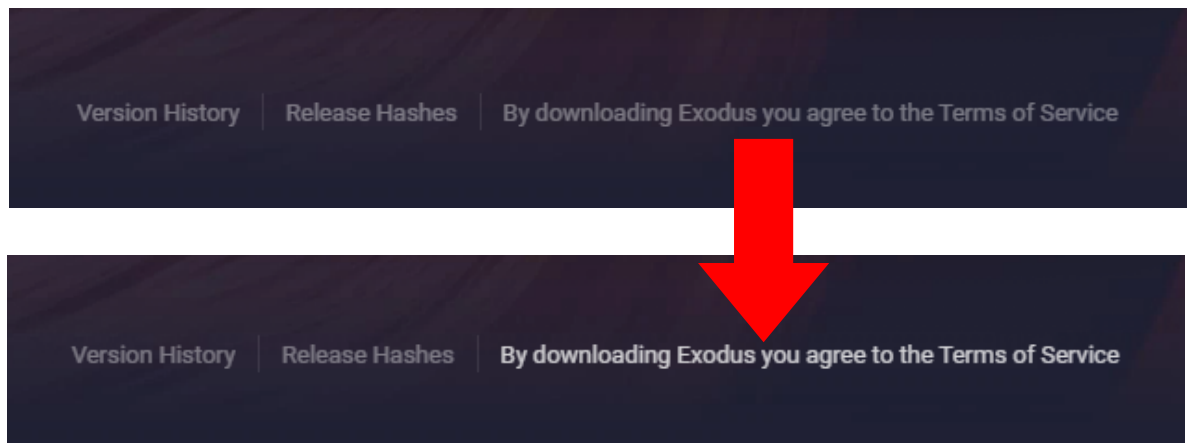
16 4. Attached hereto as **Exhibit A** is a true and correct copy of the Exodus download
17 screen as it appeared on August 21, 2021, which was accessed at my direction using the Internet
18 Archive Wayback Machine (<https://web.archive.org>), as indicated by the watermark at the top of
19 the image.

20 5. Exhibit A does not materially differ from any other versions of the Exodus download
21 page available through the Wayback Machine during the period when Plaintiff represents he
22 purchased SOL on Exodus (between August 19, 2021 and September 9, 2021, *see* ECF No. 33-3
23 ("Young Aff." at 3-4)).

24 6. During the period in which Plaintiff represents he purchased SOL on Exodus, a user
25 could download the Exodus platform by clicking on the purple icon titled "DOWNLOAD
26 EXODUS 21.8.19." Immediately above the hyperlinked purple icon appeared solid white text
27 reading: "By downloading Exodus you agree to the Terms of Service."
28



7. When a user hovered their mouse over the white text, the text brightened and expanded in size—signaling that it was a hyperlink:



8. At the time that Plaintiff affirms he purchased SOL on Exodus (*see generally* Young Aff.), clicking the white text hyperlink opened Exodus’s July 1, 2021, Terms of Service (“TOS”).

9. Attached hereto as **Exhibit B** is a true and correct copy of the Exodus TOS from July 1, 2021, which was obtained at my direction using the Internet Archive Wayback Machine.

10. This is the same version that is linked in all the archived versions of the Exodus download page available through the Wayback Machine throughout the period of Plaintiff’s alleged SOL purchases, and is currently archived at the URL: <https://www.exodus.com/legal/exodus-tos-20210701-v17.pdf>.

11. All prior versions of the Exodus TOS (*i.e.*, those pre-dating Plaintiff’s alleged SOL purchase) that have been archived by and are available through the Wayback Machine contain arbitration provisions that do not materially differ from those contained in Exhibit B.

1 I declare under penalty of perjury that the foregoing is true and correct to the best of my
2 knowledge and understanding.

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4 Executed this 11th day of April, 2024, in Scottsdale, Arizona.

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8 By: /s/ David H. McGill

David H. McGill

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11 **Civil Local Rule 5.1 Attestation**

12 I hereby attest that I have on file all holographic signatures corresponding to any
13 signatures indicated by a conformed signature (/S/) within this e-filed document.

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15
16
17 By: /s/ Sachi Schuricht

18 Sachi Schuricht